SUPREME COURT, U. S.

FILED

SEP 16 1974

MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

DOCKET NO. 73-1753

SUPPLEMENTARY MOTION

TO THE MAINE SUPREME JUDICIAL COURT

RE: APPEAL FROM DECREE OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY (313 A. 2nd 435, (Me. 1974)

(Attorneys for Respondents)
ROGER A. PUTNAM, ESQ.
VERRIL DANA PHILBRICK PUTNAM
& WILLIAMSON
#2 CANAL PLAZA
PORTLAND, MAINE (04112)

**

J. WOODROW VALLELY, ESQ.
#2 SCHOOL STREET
SANFORD, MAINE (04073)

**

ARTHUR B. LAFRANCE
246 DEERING AVE.
PORTLAND, MAINE (04102)

(RESPONDENTS)
JOHN F. CASSIDY, III,
BARBARA ANN CASSIDY,
ROSELLE CASSIDY FLYNN,
JOAN CASSIDY STETSON,

APPELLANT (pro se)
EDYTHE L. RICE DYER
c/o 61 STATE STREET
BANGOR, MAINE (04401)

SEPTEMBER 10, 1974

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

DOCKET NO. 73-1753

SUPPLEMENTARY

MOTION

TO THE MAINE SUPREME
JUDICIAL COURT

RE: APPEAL FROM DECREE
OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY
(313 A. 2nd 435, (Me. 1974)

(Attorneys for Respondents)
ROGER A. PUTNAM, ESQ.
VERRIL DANA PHILBRICK PUTNAM
& WILLIAMSON
#2 CANAL PLAZA
PORTLAND, MAINE (04112)
**
J. WOODROW VALLELY, ESQ.
#2 SCHOOL STREET
SANFORD, MAINE (04073)
**
ARTHUR B. LAFRANCE
246 DEERING AVE.
PORTLAND, MAINE (04102)

(RESPONDENTS)
JOHN F. CASSIDY, III,
BARBARA ANN CASSIDY,
ROSELLE CASSIDY FLYNN,
JOAN CASSIDY STETSON,

APPELLANT (pro se)
EDYTHE L. RICE DYER
c/o 61 STATE STREET
BANGOR, MAINE (04401)

SEPTEMBER 10, 1974

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

DOCKET NO. 73-1753

MOTION

THIS SUPPLEMENTARY MOTION
IS FOR JUSTICE;---A
REMEDY, AND VALID
CONSTITUTIONAL
EXTRAORDINARY RELIEF.

* * *

The Weller vs Sokol, case
(318 A. 2nd 193, Md.) Atlantic Reporter.
(May 25, 1974.). . .has not been previously available for research. It is the basis for this motion, - and critical to prove statutory application of the "applicable" intestate statute.

TO THE MAINE SUPREME
JUDICIAL COURT

RE: APPEAL FROM DECREE
OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY
(313 A. 2nd 435, (Me. 1974)

APPELLANT (pro se)
EDYTHE L. RICE DYER
c/o 61 STATE STREET
BANGOR, MAINE (04401)

SEPTEMBER 6, 1974

INDEX

Motion	Page # 5
Argument	Page # 10
Conclusion	Page # 23

***

TABLE OF CASES

Murray vs Sullivan - 158 Me. 98, (1962)
179 A, 2nd 307, (1962)
Weller vs Sokol - 318 A. 2nd 193 Md. (May 25, 1974)
State vs Mitchell - 97 Me. at p. 70
Strauder vs West Virginia - 100 U.S. 303
Re: Estate of John Cassidy - 313 A. 2nd 435, (1974)
Hunt vs Hunt - 37 Me. at p. 343
Berry vs Daigle - 322 A. 2nd at p. 320 (Me.)
Summit vs Corthell - 132 Me. at p. 336
Johnson vs Stetson - 159 Me. at p. 44
Dielon vs Johnson - 322 A. at p. 335 (7) (Aug. 24, 1974)
Angel vs Murray - 322 A. 2nd at p. 633 (Aug. 1974)
Pomeroy, Equity Jurisprudence - 5th Ed. 1941 (Sec. 129-31)
State vs Phillips - 107 Me. at p. 249

STATUTES

U.S.C. Rule # 24, (5)
U.S.C. Rule # 19, (b)
Title 14 M.R.S.A. 5951-5963
Chapter 707-Federal Declaratory Judgments Act. M.R.S.A. Sec. 5951
Art. III, Sec. II of Me. Constitution
Art. I, Sec. I of Me. Constitution

MOTION

If it pleases this Honorable Court; and if it is permissable under U.S.C. Rule #24. (5)--- the Appellant herein respectfully requests leave to amplify and enlarge upon my hasty supplementary motion to this Court dated May 31. 1974. re:- the said Weller vs Sokol case (318 A. 2nd 193 Md.) (May 25. 1974)- Atlantic Reporter;- which was not previously available to me for research. The Weller vs Sokol case has isolated the INTESTATE AND PROBATE aspects (of the unanswered questions of law) which my Appeal raises.

The Weller vs Sokol case isolates and proves. that a question of law (concerning the application of statutory intestate law) must legally originate from within the Legislature's mandate and public policy; AT THE (true) TIME OF (any Maine citizen's) DEATH.

This conclusion is important to my (probate) Appeal:--which requires that if the statute is "applicable" that it must be "legally" applied. and without omissions.

Therefore it is the Maine Law Court's statutory duty to ANSWER the (Supreme) Probate Court's question of law; before a VALID final distributioni of the Cassidy Estate can be made in the JURISDICTION of the Probate Court. County of Penobscot. State of Maine.

U.S.C. Rule #19. (b) plainly requires the Maine Law Court to:-

> (Quote)- "decide an important state question (of intestate law) in a way (NOT) in conflict with APPLICABLE STATE--LAW---".
>
> (emphasis mine)

My Brief to this Honorable Court. dated May 4th. 1974. at page #11. plainly states:

> (Quote) "The scope of the clause cited from the XIV Amendment. that NO state shall deny any person

within its jurisdiction the equal protection of the laws,---"

State vs Mitchell
(97 Me. at p. 70.)

A positive civil right (of every person) to be FREE from any discrimination as to LEGAL rights or duties a STATE may seek to make between him and any other persons, is a Federal issue.

(Quote) "A FEDERAL SANCTION TO THE "EQUALITY OF RIGHTS" IS IMBEDDED IN THE MAINE BILL OF RIGHTS."

*Strauder vs West Virginia
100 U.S. 303
*Dyer Brief to Maine Law
Court at p. 90-91.
State vs Mitchell (supra)

THE MAINE LAW COURT IS DUTY BOUND TO "PERMIT" THE LEGAL APPLICATION (of both sentences) OF THE MAINE INTESTATE STATUTE.

(*) PERMIT (See Statute Index)
Please see the case of
Murray vs Sullivan
(158 Me. at p. 107.)

I have timely protested (ab initio) that the distribution of the Cassidy Estate has not been "legally," or validly distributed.

(*) LEGALLY
Please see the Estate
of Cassidy, case.
(313 A. 2nd 435 at p. 439.)

I am seeking a "LEGAL" REMEDY.

Obviously violence has been done to the "SAME MANNER" of the Maine intestate statute;- and also to statutory PROBATE process and procedure.

(*) "SAME MANNER"
Please see Murray vs Sullivan.
(158 Me. at p. 99.)

In the Estate of Cassidy case:---the Maine Law Court at p. #438 (6), alleges;

> (Quote) "The doctrine of res judicata not only puts an end to strife, but produces certainty as to individual rights---"

(The case cited, is
irrelevant to this case.)

It is to be noted that;- RES JUDICATA:------implies a thing decided judicially:- but when the Question of Law, has not been;- (a)- Answered; or, (b)- Legally performed;---there is nothing left but presumption or ipse dixit;---which precludes the alleged doctrine of res judicata, re: this case.

A want for JURISDICTION, over the subject matter which was "res judicata" in the probate court of original jurisdiction;- preserves original rights;---statutory rights;- LEGAL rights, and all FACTS which were presented to the Law Court by the Supreme Court of Probate. These "agreed" rights are irrevocable;- or the case was not properly before the Maine Law Court;- for law.

The parties could not waive such rights, and the Law Court could not "legally" lapse such rights;---they were res judicata in the Probate Court,---before the case of Murray vs Sullivan:- (and never appealed.)

* Anything illegal is void.
* A want for jurisdiction, is fatal.
* A Constitutional right, is supreme.
* It is impossible for "res judicata" to be applicable, to a question of law;---which remains UNANSWERED;---or answered in an "illegal" manner.

Until justice has been done,---"res judicata" must not be allowed as a "smokescreen" to hide error of law, and ipse dixit JURISDICTION.

Therefore, "justice not having been done, no "legal", or valid REMEDY now exists, as required by statutory and CONSTITUTIONAL LAW.--- Under the 14th Amendment to the Constitution of the United States, your Appellant requests the power of this Honorable Supreme Court, to REGULATE the Maine Law Court, under the "due process" and "equal right" clauses, of both the State and Federal Constitutions:---

OR, REMAND this case with instructions, to the Maine Law Court, for "legal" procedure, TO REMEDY "MY" CONTINUING LEGAL (per stirpes) CLASS RIGHT.

The Maine Law Court is duty bound to find MY statutory "stock", (MY ANCESTOR) with respect to MY legal rights, under the---

(Quote) "applicable" intestate statute.

(Murray at p. 100.)
(See Index)

The Law Court, (being a statutory court) is duty bound by its JURISDICTION, to find the ISSUE of a child (who pre-deceased) Mr. Cassidy;---and that Mr. Cassidy is MY "legal" stock,

(Quote) "--in the same manner," provided by the intestate laws of the State of Maine, (in the FIRST sentence, of the statute.)

Murray vs Sullivan
(158 Me. at p. 99.)

AND, EXCLUSIVELY UNDER:---

The Maine intestate statute (R.S. 1954, Chap. 170, Sec. I and II;---which the Law Court admits:-

(Quote) "IS" APPLICABLE.

Murray vs Sullivan
(158 Me. at p. 100.)

And, in a "LEGAL" manner which the Law Court alleges, it applied.

Re: Estate of John Cassidy
(313 A. 2nd at p. 439.)

And,---as the Weller vs Sokol case proves;- (at p. 201, (4):-re:- only children with issue:-

> "---the most compelling argument springs from the very nature of a sterpital distribution. The ISSUE and descendants of the children of (John Cassidy)* could not be determined until the termination of the trust."

*(my emphasis)

I, Edythe L. (Rice) Dyer:- (the only grandchild, who directly survived Mr. Cassidy, at the true time of his death, ---(March 25, 1918)---am the only member of the "per stirpes" class, because my mother "pre" deceased Mr. Cassidy.

"---the testator did what he could to insure that his hoidings would remain intact and ultimately pass to HIS descendants after the death of his children."

Weller at (3)--p. 200.
(only children with
issue.)

"This circumstance,---brings us unhesitatingly to the conclusion that it was the testator's intention that the STOCKS were to be found among the CHILDREN who left ISSUE and descendants surviving---".

(NOT TO NAMED INDIVIDUALS)
(Weller (3) at p. 200.)

** ARGUEMENT **

The Maine Law Court was obviously without JURISDICTION to construe how Mr. Cassidy

(Quote) "SHOULD" view;---

"ALL" of his "LINEAL" descendants,---The irrevocable, immutable, and stare decisis Legislative public policy, descends (any man's) INTESTATE property, only once.

(*) "SHOULD"
Murray vs Sullivan
(158 Me. at p. 102.)

(*) "LINEAL"
Murray vs Sullivan
(158 Me. at p. 99.)

For a Law Court to allege that the Maine Legislature's intestate statute may create a NEW statutory "CLASS," is a SPECIAL PRIVILEDGE. The Maine Legislature has never before, delegated such JURISDICTION upon a Law Court, in any intestate situation.

IT IS "LEGALLY" IMPOSSIBLE:---!

No, "future legislative method"- exists under which the intestate statute, might, or should, create a "NEW" (original) DIRECT CLASS OF SURVIVING HEIRS:--- (43) years after any citizen's death.

Never before, in the history of Maine intestate law;---has the Legislature's descent statute (when applicable)--- OMITTED the issue of a child, who pre-deceased the intestate.

Mr. Cassidy, being survived by (4) of his (5) children; is a classic example of a "per stirpes" situation:--- and a Probated fact.

NEVER, never, never, has the issue of one surviving child,

taken (4/6ths) four sixths of an intestate estate:--- while the issue of another surviving child was limited to one sixth (1/6th) of the estate. And the issue of a child who "pre"-deceased Mr. Cassidy was also limited to one sixth (1/6th) of the estate.

THINK OF IT. . . . . .!
IT IS NOT PUBLIC
POLICY;---IT IS
"LEGALLY" IMPOSSIBLE. . . .!

Although this Honorable Court cannot concern itself with Mr. Cassidy's "intention;"-- it should be obvious that his intention was to let the "law" take its legal course.

** THE LAW HAS BEEN
(IN PART) OMITTED** (See Index)

** THE QUESTION OF LAW,
REMAINS UNANSWERED.**

** THE STATUTE BEING APPLICABLE**

THE TESTATOR'S INTENTION BEING THE "SAME" AS THE LEGISLATURE'S, PRECLUDES AMBIGUITY (at any time): OR, THE ESTATE IS "REALLY" INTESTATE. ANY OTHER CONSTRUCTION, DOES VIOLENCE TO THE STATUTE, AND CHALLENGES IT VALIDITY.

** (The burden of proof, being upon the challengers.)

** BOTH SITUATIONS EFFECTUATE THE
SAME RESULT;--STATUTORY INTESTACY.**

RES JUDICATA;- which is appealed from herein,- for the same reasons I appealed from the wilful allegation that I was seeking a NEW Declaratory Judgment. All through my briefs:- I have pleaded for a "legal" answer to the question (directly) Reported to the Maine Law Court; by the Supreme Court of Probate, County of Penobscot, State of Maine.

(A LEGAL REMEDY-IS MANDATORY.)

(The Weller vs Sokol case proves it)

The force of "due process" law, (when statutory law is admitted to be applicable)- leaves the Maine Law Court NO ALTERNATIVE except to LEGALLY answer the question presented, exactly as the Weller vs Sokol case, applied the intestate statute.

In the Cassidy situation:-
The sole issue (under an agreed statement of facts) certified by the Supreme Probate Court, to the Supreme Law Court concerned:-

WHERE THE INTESTATE STATUTE COULD LEGALLY FIND, THE SOURCE OF DESCENT. .?

My probate appeal, Re: Estate of Cassidy, intends to (also) ask, WHERE the Maine Law Court can find the LEGAL JURISDICTION to apply the doctrine of res judicata. . .WITHOUT ANSWERING THE ABOVE QUESTION. . .?

Is it based upon the same "ipse dixit" which the Law Court applied, in Murray at p. 107;---where it admits:

(Quote) "---IT WOULD BE INCONGRUOUS TO PERMIT the statute to operate. . ." (?)--IF SO, the case of Murray vs Sullivan is a LEGAL NULLITY, without an applicable statute.

This judicial presumption does violence to the applicable statute. It places the court "above" the law. It has destroyed the dependable constitutional law, to which all parties agreed, (and the Court admits) "IS" APPLICABLE.

Whether any man's lineal descendants may take "per capita" or "per stirpes"- is a matter of LAW:---so fundamental that deviation therefrom is obviously VOID;- for jurisdiction and constitutionality.

The time of any man's death must be a factual epoch;

which effectuates the creation of any man's LEGAL "CLASSES" and not to be LAPSED by anyone, or any court.

Please see Hunt vs Hunt
(37 Me. at p. 343.)
(my brief)

Whereas both Mr. Cassidy and the Maine Law Court, stipulate, admit and rely upon the "APPLICABILITY" of the INTESTATE STATUTE;---I also relied upon the "legality" of the applicable statute to effectuate Mr. Cassidy's "partial" intestacy:- (delayed only by a trust,) to the (2) two classes of his children's survivors.

The Cassidy situation,- as in the Weller vs Sokol case, (3) at p. 200; and (6) at p. 202, concerns the surviving "ISSUE OF ISSUE."

The sole question in both the Weller and the Cassidy situations, concerns the question of:- "STOCKS"; determined by the Legislature's public policy;- (1) AFTER, all children without issue, were dead: (2) after all children who survived with issue, were dead: and (3) the issue of a child who did not survive Mr. Cassidy,- but was survived by issue.

The omitted "first" sentence of the applicable Maine intestate statute (re: the Cassidy Estate) is as concerned about the ISSUE of a deceased CHILD (who "pre"-deceased the ANCESTOR)---as it is (equaily) concerned about a directly surviving child.

The ISSUE of a "pre-deceased" child (as a class, or group of claimants)---is LEGALLY a "first taker" and a "future taker."

"Ad Infinitim"
Hunt vs Hunt
(37 Me. at p. 343.)
(Weller vs Sokol)

This DIRECT CLASS ISSUE which is "legally" created (only by law) as a separate direct (mediate) class;--HAD to exist at the (TRUE) TIME OF DEATH:-----regardless of any surviving children, or their issues, --or any alleged

"future" application of the statute; --or a CLASS has been judicially omitted.

It is this irrevocable (statutory) class right--- under which I am "legally" compelled to qualify;-- (WHICH HAS BEEN IGNORED by the Law Court,)---and which may be embarrassing to the Court, to REMEDY.

(*) "FIRST TAKER"
Please see: Weller vs Sokol
(3)---at p. 200.

The other claimants, (the survivors of Mr. Cassidy's surviving children) may claim the estate, ---(as stated in Weller vs. Sokol at p. 200.)

(Quote)- "as if a child had died intestate on the date of termination owning a share of the corpus and leaving descendants surviving."---***

However, obviously in my (separate) situation; NO CHILD COULD DIE.- My mother had already died, prior to my grandfather's death.---My class TAKES DIRECTLY FROM MR. CASSIDY,- (not through a child.)-----My unimpaired class, needed only to survive the Cassidy trust, in order to make my "CLASS" A DIRECT "FIRST TAKER;" in the same manner as a NAMED PERSON.

In Brief:

It would have been impossible for my mother to be the "STOCK" referred to in Weller vs Sokol, at p. 197., ---which proves the dependability of the statute's "per stirpes" manner.

Therefore: The stipulated intestate statute mandates its own operation.

The Maine Law Court was without JURISDICTION to re-write the Cassidy Well, in a manner which;--- Mr. Cassidy:-

(Quote) "SHOULD" have intended.

Or, that the statute:-

(Quote) "MUST*" be applied---" (in an artificial manner---to satisfy the Legislature). . . .!

It is the Law Court, which:-

(Quote) "THINKS"(*)--what Mr. Cassidy
(Quote) "SHOULD"(*)--have said, (43) years after his death.

* SHOULD (at p. 102.)
* THINKS (at p. 107.)

Incredible as it may sound, the Law Court also said;

(Quote)- "Mr. Cassidy did not INTEND to incorporate by reference portions of the descent statute which would serve no useful purpose,---in resolving the dilemma. . .!

Murray vs Sullivan
(158 Me. at p. 107.)

OBVIOUSLY, THE STATUTE GRANTS NO "SPECIAL" PRIVILEGES TO RESOLVE PRESUMED DILEMMAS.

Therefore:-

The Law Court's VOID' "res judicata" is, that:

(Quote) "---it would be incongruous to PERMIT the statute to operate---"

(Quote) "---so that by application of the SECOND sentence of the quoted portion of the statute---" ---no other CLASS" was permited to exist.

Murray vs Sullivan
(158 Me. at p. 100.)

OBVIOUSLY, THE FIRST SENTENCE WAS OMITTED:. . .(!)

The Weller case plainly states that:

(Quote) "---since rules of construction are applicable ONLY in the absence of an indication of intention, ---and never to frustrate an intention."

(Weller (2) at p. 199.)

Therefore:

The Appellant's right to take that share of the Cassidy Estate, as the statute "legally" requires:- when the FIRST SENTENCE IS NOT OMITTED:---CONTINUES TO BE LEGALLY CLAIMABLE, in the:

(Quote) "THE SAME MANNER"

(Murray at p. 100.)

The Appellant herein---relied upon a comlete "LEGAL" answer:---NOT a presumption, or:-

(Quote) "---as though the testator's death occurred immediately AFTER the death of his ---LAST SURVIVING CHILD."

(43 years after his death.)
(Murray at p. 107.)

OBVIOUSLY:-

By omitting the first sentence of the applicable statute, the law court eliminated not only ALL of Mr. Cassidy's directly surviving CHILDREN;- but also the ISSUE of a child, who had pre-deceased him.

THIS DID VIOLENCE, TO THE ONLY APPLICABLE ("LEGAL") MANNER OF THE STATUTE.

As Mr. Cassidy's only DIRECT "mediate" class survivor, my stock, my "per stirpe," STATUTORY RIGHT as a LEGAL CLAIMANT, continues to EXIST (exclusively) under the statute which MUST BE "LEGALLY" APPLIED

(313 A. 2nd at p. 439.)

It is not my intention to attempt to prognosticate what manner or "legal" rights Mr. Cassidy's SURVIVING CHILDREN'S SURVIVORS may claim under the applicable statute.

However:-

(1) I respectfully request my LEGAL (and civil) right (under the intestate statute)---to claim and take ONE CHILD'S SHARE OF THE CASSIDY ESTATE. (1/3 of the estate.)

OR,--

(2) I respectfully observe, that as the issue of a "pre-deceased" child,- (in esse) I have a continuing "legal" right: (as though the Law Court has neglected or "omitted" to ANSWER,- "my side of the case"-re:- my separate per stirpes class.

(3) If, the Maine Law Court wants to presume that Mr. Cassidy intended to vicariously incorporate BY REFERENCE, (the intestate statute) FOR THE FIRST TIME, (43) years after his death;--(and if the Maine Law Court, wants to "then" incorporate the statute, for THE FIRST TIME)---this fatal mistake (this error of law) "LEGALLY" VESTS THE WHOLE ESTATE, in Mr. Cassidy's ONLY DIRECT SURVIVOR:- with the same "continuing" legal right, which a direct child could "then" legally claim if "THEN" LIVING. I am alive;- I can only claim under my direct ancestor:- Mr. Cassidy,- (not as a child, - or through a child) but with the same statutory right as a child's class, "now living."(*)

(*) THIS IS WHAT THE STATUTE "NOW" REQUIRES.

Please note:-

Artificial law,- like anything else artificial;---if actually applied often creates strange and unexpected effects.

I am legally aggrieved. I have been denied a legal remedy. Justice has "lapsed" my legal class and denies me a legal REMEDY, applicable to my "continuing" statutory class.

Only this Honorable Court can REGULATE (or remand) the LAW of this case; to effectuate my "equal" rights under the State and Federal Constitutions.

As alleged in the Weller case (at p. 201) a most compelling fact is:

> THAT, distribution depended upon survivorship:- and that survivorship depended upon the fact that each CHILD had to be survived by ISSUE, to qualify as (his) LINEAL DESCENDANTS. BEING HIS ONLY DIRECT LINEAL SURVIVOR NOW LIVING; perhaps I should LEGALLY claim the WHOLE ESTATE:- (if I cannot have one child's share.)

I am a "DIRECT" SURVIVOR. I am not a child. But as the ISSUE of a child, THE MAINE LAW COURT HAD NO JURISDICTION TO LAPSE MY STATUTORY (MEDIATE) CLASS, as a surviving separate "per stirpes" class.

It is distressing to note that the Maine Law Court, has ignored and refused to legally answer the "Probate Court's legal question presented.-It has omitted the first sentence of the applicable statute;- it has construed that which Mr. Cassidy "SHOULD" have intended;- it has lapsed the "mediate" class;- it did not incorporate (by reference) the applicable statute, UNTIL (about) (55) years after the Cassidy Will was written;- it has (in effect) forced an EQUITY APPEAL upon a Probate Court;- in violation of all (unappealed) facts and subject matter,- (43 years after Mr. Cassidy's death), it created a NEW DIRECT and original class of survivors.

> With all this void law and unconstitutional procedure, the court declares all of these determinations to be untouchable, because of the doctrine of RES JUDICATA; which the Maine Law Court now alleges.
>
> (I am aggrieved.)

Please see:

> JURISDICTION:- p. 6. of my Brief to this Honorable Court dated May 4th, 1974.

Respectfully, (as in the Weller case at p. 202.) I request that the distribution of the Cassidy Estate be:-

> (Quote) "---governed by the intestacy law, as it stood (and as he understood it) when the will---took effect, at his death."---
>
> Weller vs Sokol
> (318 A. at p. 202.)
> (my emphasis)

Although the Maine Law Court denied my request for a valid final Probate distribution in Re; Estate of John Cassidy 313 A. 2nd 435 (Me. 1974): (after many years of litigation with the Law Court) it has finally admitted, (EXACTLY) THAT WHICH IT DID:- BUT REFUSES TO ALLOW. Namely, that it answered the LEGAL EFFECT of that which the Maine Intestate Statute requires, and that which Mr. Cassidy "LEGALLY" INTENDED.

On Feb. 21, 1974, the Maine Law Court said:-

> (Quote) "This court in Murray examined, discussed and determined the LEGAL effect of what John Cassidy said."
>
> "It could give NO HEED to what he (John Cassidy) "MIGHT" or "SHOULD" have said.
>
> (my emphasis)
> (313 A. 2nd at p. 439.)
> Re: Estate of John Cassidy

WHAT MORE DOES A PROBATE COURT NEED---TO EFFECTUATE A VALID FINAL (and legal) DISTRIBUTION. . . . .?

Obviously, neither Mr. Cassidy (or the LAW Court) could construe the "legal effect" of what he might or should have said. BUT THE MAINE LAW COURT DID EXACTLY THAT, WHICH IT ADMITS,- IT COULD GIVE "NO HEED."

The incongruity of it all---is that ERROR of law will not "PERMIT" (Murray, 158 Me. at p. 107) the "LEGAL EFFECT" of what Mr. Cassidy said:- to be performed with "due process."

This last communication from the Maine Law Court KNOCKS THE "CASE" out from under the construction set forth in the Murray vs Sullivan case.

It requires a remand, a remedy, regulation, or a legal ANSWER to the case presented to the Law Court by the (unappealed) Probate Court's original facts and jurisdiction.

RELIEF, under:-

> (Quote) "---such other and/or further relief as the Court deems (LEGALLY) just."
>
> *** should have been available to the Appellant herein;---under 14 M.R.S.A. 5951;-5963 and literally construed to allow consideration of the rights of parties relative to the validity or interpretation of statutes.
>
> Berry vs Daigle
> 322 A. 2nd at p. 320
> (9) (10) (Maine)
> (August 24, 1974)

There seems to be no doubt that my "legal" interest is involved:- as Berry vs Daigle (supra) (Sec. 14-16) plainly states:

> "Under declaratory procedures the plaintiff must have an established LEGAL interest."
>
> (322 A. 2nd at p. 326.)
> (August, 1974.)

And be:-

> (Quote) "--restricted only by the (class) limitations, fixed by the incorporated statute.
>
> (Murray at p. 103.)

Please note, in the Murray vs Sullivan case;

> (Quote) "they disagree only as to the size of the share each claimant should receive.
>
> (Murray 158 Me. at p. 100.)

In Berry vs Daigle, (supra) FOR DECLARATORY RELIEF:-

> (Quote) "There must be a definite assertion of LEGAL rights on the one side and a positive denial thereof on the other side."
>
> Sec. (17)(18)
> (322 A. 2nd at p. 326.)

The obvious fact that both the parties and the Law Court were exclusively restricted to the "LEGAL" INTESTATE STATUTE:- leaves no excuse or escape from void illegal construction.

The Law Court has failed to consider proved facts, and misstated law, so plainly, that the point involved is NOT ARGUABLE.

> Summit vs Corthell
> (132 Me. 336.)

> Title 14 M.R.S.A. Sec. 5951, plainly states:-
>
> --This chapter (707) shall be interpreted and construed in harmony with Federal laws re: Declaratory Judgments Act.
>
> Sec. 5953:- JURISDICTION:-plainly states,
>
> Courts, within their RESPECTIVE JURISDICTION, have power to declare RIGHTS-status and other LEGAL relations whether or not further relief is or could be claimed.
>
> Sec. 5954:---(CIVIL PROCEDURE)
>
> Any person interested-----under a WILL---whose RIGHTS status or LEGAL relations are affected by a STATUTE---may have determined any question arising UNDER the instrument, OR statute, and obtain a declaration of rights, status, or other LEGAL relations thereunder.

The KEY word- "JURISDICTION,"- limited the Maine

Law Court to effectuate my LEGAL "RIGHTS" (which are affected by a statute)-- to a declaratory performance requiring the APPLICATION of both parts of the:

(Quote) "APPLICABLE" Maine Intestate STATUTE.

WHY NOT?

Sec. 5959:-

All orders, judgements and decrees under this Chapter may be reviewed. (The Maine Law Court refuses to act.)

BUT VOID JURISDICTION IS SOMETHING ELSE---!

In plain words:-

* I promptly and TIMELY appealed the Murray vs Sullivan case.

* I have constantly and continuously appealed to every available court,-- without a REMEDY, RELIEF, OR A VALID LEGAL ANSWER.

* I have accepted all distributions to date "under protest" as the Probate Records will show.

A civil right exists under constitutional statutory law. -- LEGAL UNCERTAINTY continues (under Sec. 5958.) It now appears that only this Honorable (U.S.) Supreme Court (having regulatory power) can, or may, legally enforce the law required, in a manner (similar to Sec. 5960, and Sec. 5963) which will enforce my continuing statutory ("PER STIRPES"), ---CIVIL RIGHTS AS A SEPARATE LEGAL CLASS CLAIMANT, UNDER THE MAINE AND FEDERAL CONSTITUTIONS.

The Murray vs Sullivan case omitted all of the FIRST SENTENCE of the applicable intestate statute.

-----because of the lack of proper "CLASSES"---the Law Court admits in Dielon vs Johnson 322 A. 2nd at p. 335-(7) (Me., Aug. 24, 1974)---that:

(Quote) "---we would be rendering a purely advisory opinion, a power which the LAW COURT does not CONSTITUTIONALLY POSESS."

(my emphasis)

** IN CONCLUSION **

Obviously:

To incorporate an intestate statute for the FIRST time, (43) years after any citizen's death is LEGALLY IMPOSSIBLE, -and the case of Weller vs Sokol (supra) proves it.

To judicially presume that an intestate statute can create a new ORIGINAL CLASS of intestate claimants, (43) years after any United States citizen's death is legally impossible and violently UNCONSTITUTIONAL to the rights of other "lineal" descendants statutory rights.

The case of Johnson vs Stetson (159 Me. at p. 44) admits that Mr. Cassidy died on March 25, 1918.

The case of Murray vs Sullivan (158 Me. at p. 98) presumes that Mr. Cassidy died on June 9, 1961.

The Cassidy estate was originally probated on (April 30, 1918.)

A (legally possible) statutory application contemplates NO waiver of constitutional rights.

Proof exists:- and it is well settled, that:- Statutes are not to be read in a manner which would;

(Quote) "---result in attributing to the Legislature an intention that is contradictory of, OR inconsistant with the evident purposes of the act.---"

Angel vs Murray
(322 A. 2nd at p. 633.)
(August, 1974)

I am aggrieved:

It seems to me that mandamous or an extraordinary remedy should be applicable because:-

(1) The Maine Law Court is under the obligation imposed by LAW to perform the duty of:--APPLYING the Maine Intestate Statute, in the

(Quote) "same manner", required by the prospective manner of the---

(Quote) "laws of the State of Maine."

(Murray 158 Mr. at p. 99.)

(1) The legal duty is in respect to a required legal performance.

***

(2) It has been established (in the Estate of Cassidy case) that I have a clear LEGAL right to have the duty performed.

***

(3) That there is no other legal remedy except the continuing prospective Legislative manner of the Legislature's statute.

***

(4) The Maine Law Court's Opinion (in the Murray vs Sullivan case) does not qualify as being LEGAL; or Constitutional, or in compliance with the Legislature's delegated statutory jurisdiction over intestate property.

***

(5) The SUBJECT MATTER (and the Agreed FACTS) presented to the Law Court (by the Supreme Court of Probate)- WAS NOT IN DISPUTE.- The Law Court was without authority to exceed the

(ORIGINAL) findings as certified by the Probate Court.

Jurisdiction, concerns:
"the power of a court to render a VALID decree,"

Pomeroy, Equity
Jurisprudence:-
(5th Ed. 1941) Sec 129-31.)

(Quote) "The power which a court posesses to hear and determine cases,---is delineated by the APPLICABLE CONSTITUTIONAL AND STATUTORY PRONOUNCEMENTS."

Obviously: ***

The parties to a proceeding CANNOT confer jurisdiction upon a court to decide the ISSUES which "SHOULD" BE "DISPUTED"; (when NO FACTS are disputed.) ***

"DISPUTE"
(158 Me. at p. 100.)
"SHOULD"
(158 Me. at p. 102.)

A WANT FOR
SUBJECT MATTER IS
VOID:
AND FATAL LEGAL ERROR.

Controversies are reserved by particular laws to the exclusive jurisdictions, of the original forum;- (such as a Probate Court)-prior to a request for applicable LAW.

In brief:-

The Maine Law Court "OVERREACHED" its jurisdiction when it refused to:

(Quote) "PERMIT" the first half of the intestate statute to operate.

See Statute: (Index)
(*) PERMIT -
(158 Me. at p. 107.)

Article III, Sec. II, of the Maine Constitution declares three (3) co-ordinate (jurisdictions) of Maine Government.

Article I, Sec. I, specifies certain natural and unalienable rights of man, to be CONSTITUTIONALLY AVAILABLE.

State vs Phillips
(107 Me. at p. 249.)

THIS IS WHAT I RESPECTFULLY
REQUEST:---A (VALID) REMEDY,
AND RELIEF,----
OR, JUSTICE HAS NOT BEEN
DONE. . . . .!

If our "Watergate Era" has proved anything:---it is, that the day must never come, (in America) when one (of the three departments of Constitutional government) may illegally deny the jurisdiction of another branch of government, a STATUTOR LEGAL - REMEDY;- by taking shelter behind the doctrine of res judicata.

This Honorable Supreme Court's law, (re: President Nixon) proves that the Executive Branch of our government, does not have "RES JUDICATA", - JURISDICTION over the Judicial branch of the U.S. Government. . .(except for pardons.)

Therefore, (in my case) the Judicial Branch of Maine Government does not have "res judicata"-jurisdiction, over the Legislative Branch of Maine Government.

** CONSTITUTIONAL LAW IS INVOLVED**

THE APPELLANT HEREIN IS
AS DISILLUSIONED,--(WITH JUSTICE)
AS THE AMERICANS "PUBLIC"
WOULD HAVE BEEN;--

IF THE PRESIDENT HAD
DECLARED "EXECUTIVE
PRIVILEGE",--TO BE,-"RES
JUDICATA,"----
(and got away with it)--!

Title, 4 M.R.S.A. Sec. 401;- (5) plainly states Supreme Court of Probate may "timely" have appelate jurisdiction:- BUT CANNOT ENTERTAIN ANNULMENT OF ORIGINAL JURISDICTION.

Kimball Petitioner
142 Me. 182
49 A. 2nd 70

O'Grady vs Patridge
319 A. 2nd 115,- (June, 1974) (Me.)
(3),---appellate court had NO timely jurisdiction over ORIGINAL probate procedure.

THE MAINE COURTS HAVE OMITTED THE ISSUE OF A CHILD WHO PRE-DECEASED MR. CASSIDY:---BY NOT PERMITTING THE FIRST HALF OF THE APPLICABLE INTESTATE STATUTE TO OPERATE.

PREJUDICIAL
UNCONSTITUTIONAL
IN JUSTICE EXISTS.

I, AND MY HEIRS,- WILL ALWAYS CLAIM THAT WHICH THE APPLICABLE STATUTE PERMITTED on March 25, 1918:- and CONTINUED (unchanged) TO PERMIT on June 9, 1961:- and on Sept. 6th, 1974;- and ad infinitim:- as the Weller vs Sokol case proves.

That which was wrong in the beginning; never improves with time.

Respectfully submitted:

Edythe L. (Rice) Dyer
c/o 61 State Street
Bangor, Maine (04401)

September 6, 1974

The applicable statute, incorporated by reference into the Cassidy will, is R.S., 1954, Chap. 170, Sec. 1, Subsec. II which provides:

"II. The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation.

"OMITTED" NOT PERMITTED BY COURT

If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation."

USED

**Mr. Cassidy died March 25, 1918— (not) on June 9, 1961.